

BRYAN SCHRODER
United States Attorney
District of Alaska

MARK A. NITCZYNSKI
U.S. Department of Justice – ENRD
Environmental Defense Section
999 18th Street; South Terrace; Suite 370
Denver, CO 80202
Phone: (303) 844-1498; Fax: (303) 844-1350
Email: mark.nitczynski@usdoj.gov

BRIAN UHOLIK
Environment and Natural Resources Division
4 Constitution Square
150 M Street, N.E.
EDS/4th Floor
Washington, D.C. 20002
Phone: (202) 305-0733; Fax: (202) 514-8865
Email: brian.uholik@usdoj.gov

Attorneys for Defendants

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT ANCHORAGE**

BRISTOL BAY ECONOMIC
DEVELOPMENT CORPORATION, *et al.*

CASE NO. 3:19-CV-00265-SLG

Plaintiffs,

v.

CHRIS HLADICK, U.S.
ENVIRONMENTAL PROTECTION
AGENCY, *et al.*,

Defendants.

SALMONSTATE, *et al.*,

CASE NO. 3:19-CV-00267-SLG

Plaintiffs,

v.

CHRIS HLADICK, U.S.
ENVIRONMENTAL PROTECTION
AGENCY, *et al.*,

Defendants.

TROUT UNLIMITED,

Plaintiffs,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY, *et al.*,

Defendants.

CASE NO. 3:19-CV-00268-SLG

**STIPULATION AND JOINT MOTION FOR VACATUR OF SCHEDULING
ORDER AND FOR ENTRY OF NEW BRIEFING SCHEDULE**

Plaintiffs and Defendants (the “Parties”) in these consolidated cases stipulate and jointly move this Court for vacatur of the current Scheduling Order, ECF 27, and for entry of a new briefing schedule, in light of the determination by the United States Environmental Protection Agency (“EPA”) that additional documents should be included in the administrative record. These issues came to light recently, after the deadline for Plaintiffs to move to supplement the record.

The Parties have reached agreement regarding revisions to the current Scheduling Order. The revisions would provide EPA with approximately two weeks to submit an updated administrative record and index; however, EPA plans to submit the revised record and index sooner if that is feasible. The revised schedule also would establish a new briefing schedule that does not require Plaintiffs to file their opening merits brief(s) until after the

updated record and index have been submitted.¹ The new schedule would not alter the deadline for Defendants to submit their reply brief in support of their motion to dismiss (currently due January 21, 2020), and the merits briefing schedule generally would track the schedule that this Court previously established.²

A table that sets forth the proposed new schedule is attached here to as Attachment A, and a proposed order is being submitted herewith.

Respectfully submitted this 16th day of January, 2020.

/s/ Mark A. Nitczynski
MARK A. NITCZYNSKI
United States Department of Justice - ENRD
Environmental Defense Section
999 18th Street; South Terrace, Suite 370
Denver, CO 80202
Phone: (303) 844-1498; Fax: (303) 844-1350
Email: mark.nitczynski@usdoj.gov

BRIAN UHOLIK
Environment and Natural Resources Division
4 Constitution Square
150 M Street, N.E.
EDS/4th Floor
Washington, D.C. 20002
Phone: (202) 305-0733; Fax: (202) 514-8865
Email: brian.uholik@usdoj.gov

Attorneys for Defendants

¹ Under the current Scheduling Order, Plaintiffs' joint opening merits brief is due on January 16, 2020.

² Based on information indicating that the U.S. Army Corps of Engineers will not be making a final Clean Water Act permit decision until after this summer, Plaintiffs anticipate that the new briefing schedule will provide this Court with sufficient time to rule beforehand.

s/ Jeffrey M. Feldman (consent)

Jeffrey M. Feldman (AK Bar No. 7605029)
SUMMIT LAW GROUP PLLC

Ralph H. Palumbo (*Pro Hac Vice*)

Lynn M. Engel (*Pro Hac Vice*)

YARMUTH LLP

Attorneys for Bristol Bay Economic Development Corporation, Bristol Bay Native Association, Inc. and Bristol Bay Reserve Association

s/ Megan R. Condon (consent)

Megan R. Condon (AK Bar No. 1810096)
Matthew N. Newman (AK Bar No. 1305023)
NATIVE AMERICAN RIGHTS FUND

Attorneys for United Tribes of Bristol Bay

s/ Scott Kendall (consent)

Scott Kendall (AK Bar No. 0405019)
HOLMES, WEDDLE & BARCOTT

Attorney for Bristol Bay Regional Seafood Development Association, Inc.

s/ Katherine Strong (consent)

Katherine Strong (AK Bar No. 1105033)
Brian Litmans (AK Bar No. 0111068)
TRUSTEES FOR ALASKA

Attorneys for SalmonState, Alaska Center, Alaska Community Action on Toxics, Alaska Wilderness League, Cook Inletkeeper, Defenders of Wildlife, Friends of McNeil River, McNeil River Alliance, National Parks Conservation Association, National Wildlife Federation, Sierra Club, and Wild Salmon Center

s/ Jacqueline M. Iwata (consent)

Jacqueline M. Iwata (*Pro Hac Vice*)
Thomas D. Zimpleman (*Pro Hac Vice*)
Joel R. Reynolds (*Pro Hac Vice*)
NATURAL RESOURCES DEFENSE COUNCIL

Attorneys for Natural Resources Defense Council

s/ Thomas S. Waldo (consent)
Thomas S. Waldo (AK Bar No. 9007047)
Erin Whalen (AK Bar No. 1508067)
EARTHJUSTICE *Attorneys for Earthworks*

s/ Abraham J. Shanedling (consent)
Austin Williams (AK Bar No. 0911067)
TROUT UNLIMITED

Paul A. Werner (*Pro Hac Vice*)
Steven P. Hollman (*Pro Hac Vice*)
Abraham J. Shanedling (*Pro Hac Vice*)
Rachelle P. Bishop (*Pro Hac Vice*)
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Attorneys for Trout Unlimited

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2020, I filed foregoing STIPULATION AND JOINT MOTION FOR VACATUR OF SCHEDULING ORDER AND FOR ENTRY OF NEW BRIEFING SCHEDULE using the Court's CM/ECF system, which serves copies on counsel of record.

/s/ Mark A. Nitczynski

ATTACHMENT A

Document / Action	Proposed Deadline	Proposed Page/Word Limits
Defendants' Reply in Support of Motion to Dismiss	1/21/2020 ³	20/5,700
Agency Record and Revised Index	1/31/2020 (may be filed sooner)	N/A
Plaintiffs' Joint Opening Merits Brief [and up to a total of three supplemental briefs (one brief in each of the three cases) filed by plaintiffs]	21 days after submission of the Agency Record and Revised Index	35/10,000 for a joint brief filed on behalf of all Plaintiffs 7/2000 for optional Supplemental Merits Briefs that may be filed by Plaintiffs in each of the three actions
Defendants' Opposition to Plaintiffs' Opening Merits Brief(s)	40 days after Plaintiffs' Opening Merits Brief	35/10,000, plus 7/2,000 additional for each Supplemental Merits Brief
Plaintiffs' Joint Reply Brief	21 days after Defendants' Opposition to Plaintiffs' Opening Merits Brief(s)	20/5,700 if no Supplemental Merits Briefs are filed; 25/6,875 if Supplemental Merits Briefs are filed
Request for Oral Argument, if any	7 days after Plaintiffs' Joint Reply Brief	N/A
Joint Appendix	14 days after Plaintiffs' Joint Reply Brief	N/A

³ This date is unchanged.